

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL NO. 1:24-CV-00097

SANFORD A. KILLIAN,)	<u>NOTICE OF REMOVAL</u>
)	
Plaintiff,)	Formerly 24 CVS 164
)	Henderson County
v.)	General Court of Justice,
)	District Court Division
)	
SUSAN W. MORRIS and)	
KATRINA MOONEY,)	
)	
<u>Defendants.</u>)	

COMES NOW the United States of America, by and through Dena J. King United States Attorney for the Western District of North Carolina, and pursuant to 28 U.S.C. §§ 1441, 1442(a), 1446, and 2679(d)(2), the United States hereby removes to the United States District Court for the Western District of North Carolina—Asheville Division the action styled *Sanford A. Killian v. Susan W. Morris and Katrina Mooney*, 24 CVS 164, which was filed in the General Court of Justice, District Court Division of Henderson County, North Carolina.

In accordance with 28 U.S.C. §§ 1446 and 2679(d)(2), the United States provides the following short and plain statement of the grounds for removal:

1. On January 30, 2024, Plaintiffs commenced this action by filing a Complaint in the General Court of Justice, District Court Division of Henderson County, North Carolina. (Attached hereto as Exhibit 1).

2. On February 23, 2024, the Clerk issued an Order granting the Defendants Susan W. Morris and Katrina Mooney an additional 30 days in which to file an answer or other pleading in this action, including up to April 3, 2024.

3. On April 3, 2024, the United States Attorney's Office for the Western District of North Carolina received notification of the pending action from the United States Department of Agriculture, Forest Service ("USDA").

4. Removal is proper and timely under 28 U.S.C. § 2679(d)(2) because the Complaint purports to bring state law tort claims against Susan W. Morris and Katrina Mooney, two USDA employees who acted within the course and scope of their federal employment at all relevant times for purposes of this action.

5. In further support of removal, attached hereto as Exhibit 2 is a copy of the Certification of Scope of Employment executed by Dena J. King, the United States Attorney for the Western District of North Carolina, which confirms that the two named defendants were federal employees who acted within the course and scope of their federal employment with respect to the events alleged in the Complaint.

6. Removal is also proper pursuant to 28 U.S.C. § 1441(a), which provides in pertinent part that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed . . . to the district court of the United States for the district and division embracing the place where such action is pending.”

7. Because this action was filed in the General Court of Justice, District Court Division of Henderson County, North Carolina, removal to the United States District Court for the Western District of North Carolina—Asheville Division is proper.

8. The undersigned’s limited appearance in this case should not be construed as a waiver. By filing this Notice of Removal, the United States does not waive its right to file a responsive pleading including a motion to dismiss, or to assert any defenses or objections, including insufficiency of service or service of process, sovereign immunity, lack of subject-matter jurisdiction, statute of limitations, or other defenses, including those enumerated in Rule 12(b) of the Federal Rules of Civil Procedure.

9. A copy of this Notice of Removal will be promptly filed in case file number 24 CVS 164 in the General Court of Justice, District Court Division of Henderson County, North Carolina, and notice will be provided to Plaintiffs’ counsel

via Federal Express at the address provided in Plaintiffs' state court pleadings.

WHEREFORE, this action previously pending in the District Court Division of Henderson County, North Carolina and styled as *Sanford A. Killian v. Susan W. Morris and Katrina Mooney*, 24 CVS 164, is hereby removed to the United States District Court for the Western District of North Carolina.

This the 3rd day of April, 2024.

DENA J. KING
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I CERTIFY that on the 3rd day of April, 2024, the foregoing Notice of Removal, including all exhibits thereto, was electronically filed with the Clerk of the Court using the CM/ECF system and served on the Plaintiffs by mailing a copy thereof, by Federal Express, Airbill Number 7758 0871 9214 and properly addressed to:

Donald H. Barton, counsel for Plaintiffs
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